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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,528	02/19/2002	Koichi Kimotsuki	122.1489	1664
21171	7590	02/12/2004		
STAAS & HALSEY LLP			EXAMINER	
SUITE 700				KIM, ELLEN E
1201 NEW YORK AVENUE, N.W.			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20005				2874

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/076,528	KIMOTSUKI ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Ellen E Kim	2874

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 December 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-5,7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-5,7 and 9-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_ .

## **DETAILED ACTION**

This action is responsive to Applicant's amendment filed on 12/19/03.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 3, 10, and 13 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Jansen Van Doorn et al [USPAT 6,477,294].**

Jansen Van Doorn et al disclose an optical device having arrayed waveguide grating comprising a plurality of input ports, two output ports [fig. 1], light emitting means [inherent, see light source of reference wavelength], light detecting means 6, a temperature control circuit 7.

Applicant argues that Jansen Van Doorn et al do not show any monitoring of a pilot signal contained in output multiplexed signals.

Examiner does not agree with Applicant's argument because Van Doorn et al clearly show a detecting means, and it is necessary to monitor for detecting.

In re claim 3, Van Doorn et al clearly show in fig. 3 that there are two output ports [one near element 3, one near element 4] for different output signals, and all the signals are initially transmitted by a common arrayed-waveguide 2.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 4, 5, 7, 9, 11, 12, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jansen Van Doorn et al as applied to claim 3 above, and further in view of Iwaoka et al [USPAT 4,893,353].**

Jansen Van Doorn et al discloses every aspect of claimed invention except for the light emitting means which is a wavelength tunable light source having a wavelength locker function, and generates signal light whose wavelength is swept within the bandwidth of the port, or a plurality of light sources.

Iwaoka et al disclose an optical sweeper comprising a wavelength tunable light source having a wavelength locker function, and generates signal light whose wavelength is swept within the bandwidth of the port, and a plurality of light sources [fig. 13].

It would have been obvious to the ordinary skilled person in the art at the time the invention was made to modify Jansen Van Doorn et al's device to include the wavelength tunable light source having a wavelength locker function, and generates signal light whose wavelength is swept within the bandwidth of the port, and a plurality of light sources as shown in Iwaoka et al's reference for the purpose of having a high accuracy and high stability in frequency of output [abstract].

In re claims 4, 7, and 11, the detecting means detecting the amount of fluctuation in the filter characteristics of the port by detecting the swept signal light is inherently shown by the Iwaoka et al's device.

In re claims 5, 9, and 12, the detecting means inherently shown by Iwaoka et al's device. Iwaoka et al show in column 4, lines 32-47 that comparison is done between pluralities of light sources.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ellen Kim whose telephone number is (703) 308-4946. The examiner can normally be reached on Monday and Thursday.

Ellen E. Kim  
Primary Examiner  
January 30, 2004/EK

